

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KAREN ANN LEESON CARR,

Plaintiff,

v.

No. 18cv874 JCH/SCY

SAFECO INSURANCE COMPANY,
LIBERTY MUTUAL COMPANY,
BLUESTAR INSURANCE AGENCY,
DAIRYLAND AUTO,
SENTRY INSURANCE,
LISA PADILLA-EATON,
JOHN DOE, and
JOSHUA MONTANO,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on *pro se* Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, Doc. 1, filed September 17, 2018 ("Complaint") and on her Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed September 17, 2018 ("Application"). For the reasons stated below, the Court will **DISMISS** this case **without prejudice** and **DENY** Plaintiff's Application as moot.

Plaintiff filed her Complaint using the form "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983." Complaint at 3. Plaintiff alleges she was involved in an automobile collision with Defendant Padilla-Eaton. Complaint at 3. Defendant Montano was an Albuquerque Police Officer that responded to the collision. Complaint at 3. Plaintiff filed an action on August 25, 2017, in the Second Judicial District Court, County of Bernalillo, State of New Mexico. Complaint at 7. In her action in this Court, Plaintiff seeks the following relief: (i) "to have a real

judge and jury;” (ii) to have her eye injury addressed; and (iii) to have her vehicle completely restored. Complaint at 5.

As the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction”). While the form Complaint states “Jurisdiction is invoked pursuant to 28 U.S.C. § 1343[a](3), 42 U.S.C. § 1983,” there are no allegations that Defendants deprived Plaintiff of any right, privilege or immunity secured by the Constitution or any federal law. Plaintiff states: “Jurisdiction is where crash occurred. Albuquerque N.M.” Complaint at 2. Plaintiff’s Complaint does not otherwise contain “a short and plain statement of the grounds for the court’s jurisdiction” as required by Rule 8(a)(1) of the Federal Rules of Civil Procedure.

The Court does not have jurisdiction over this matter. *See Evitt v. Durland*, 243 F.3d 388 *2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction sua sponte”) (quoting *Tuck v. United Servs. Auto. Ass’n*, 859 F.2d 842, 843 (10th Cir.1988)). Plaintiff resides in New Mexico and indicates that Defendant Padilla-Eaton also resides in New Mexico and that Defendant Montano is an officer with the Albuquerque Police Department. *See* Complaint at 1, 10. Consequently, there is no properly alleged diversity jurisdiction. Nor is there any properly alleged federal question jurisdiction because there are no allegations that this action arises under the Constitution, laws, or treaties of the United States.

The Court will dismiss the Complaint without prejudice for lack of jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction,

the court must dismiss the action”); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir. 2006) (“[D]ismissals for lack of jurisdiction should be without prejudice because the court, having determined that it lacks jurisdiction over the action, is *incapable* of reaching a disposition on the merits of the underlying claims.”).

Because it is dismissing this case, the Court will deny Plaintiff’s Application to proceed *in forma pauperis* as moot.

IT IS ORDERED that:

- (i) this case is **DISMISSED without prejudice**; and
- (ii) Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed September 17, 2018, is **DENIED as moot**.


UNITED STATES DISTRICT JUDGE